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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.Rev.P.No. 531/2011**

% *Judgment delivered on:02nd December, 2011*

AMIT DAHIYA

..... Petitioner

Through : Mr.B.S. Rana , Adv.

versus

STATE

..... Respondent

Through : Ms.Rajdipa Behura,
APP for State with SI Ashok
Kumar, police station Prashant
Vihar in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, the petitioner has challenged the impugned order dated 18.10.2011 whereby learned Trial Court has framed charges for the offence punishable under Section 498A/406/307 Indian Penal Code, 1860.

2. At the outset, Mr. B.S. Rana, learned counsel for the petitioner submitted that instant petition is restricted to the challenging the framing of charge under Section 307 Indian Penal Code, 1860 only.

3. It is pertinent to mention that petitioner earlier filed similar Criminal Revision Petition No.516/2011, however during arguments, learned counsel for petitioner, withdrawn the same on 18.11.2011. Consequently, this Court could not have given opinion thereon.

4. Learned counsel for the petitioner submits that the alleged incident is of dated 17.01.2011 when the wife of the petitioner was got admitted in Bhagwati Hospital, Sector – 13, Rohini, Delhi in semi-conscious position.

5. On the statement of father of victim, who is father-in-law of petitioner, case FIR No. 25/2011 was registered under Section 498A Indian Penal Code, 1860 at police Station Prashant Vihar, Delhi. During investigation, offence under Section 406/307 Indian Penal Code, 1860 were also added. Accordingly, charge-sheet has been filed for the offence under Section 498A/406/307 Indian Penal Code, 1860.

6. Learned counsel for the petitioner submits that vide impugned order, the Trial Court has also framed charge U/s 406/307 IPC apart from Section 498A Indian Penal Code, 1860 also.

7. He further submits that as per the report of concerned Doctor on MLC, the wife of the petitioner was in semi-conscious; however, she was not fit for statement. Admittedly, statement of victim was recorded only on 22.01.2011 i.e. four days after the alleged incident. It is also not in dispute that on 17.01.2011, victim was not in a position to make statement.

8. Learned counsel for the petitioner further submits that the victim in her statement, which was recorded on 22.01.2011 stated that on 22.08.2010 after *Rakhi* festival she was given beating after which she was turned out from the house barefooted. About half an hour later, they came to her and found her sitting in a park; from where they brought her back to the house and started taunting. On 16.01.201, when she was sleeping in her bedroom with her son *Garvit*, her husband (petitioner herein) went out by saying that he was going to meet his mother and she may sleep. When she opened her eyes, she found herself in the hospital and she does not remember what happened in between but she was having a doubt that her husband gave her something for eating and then tried to strangulate her because earlier also on 26.09.2010, her husband had tried the same.

9. Learned counsel for the petitioner submits that this is only suspicion and nothing else. To support his argument he relied upon *Union of India v. Prafulla Kumar Samal* 1979 AIR (SC) 366 and referred to para No.8 which reads as under:-

“The scope of section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh AIR 1977 SC 2018 where Untwalia, J. speaking for the Court observed as follows:-

‘Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the

conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor pro poses to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebut ted by the defence evidence; if any, cannot show that the accused committed the offence then there will be no sufficient ground for proceeding with the trial’.

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.”

10. Though, strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. However, learned counsel submits that at the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground for presumption that the accused has committed the offence, then it is not open to Court to say that there is not sufficient ground for proceeding against the accused.

11. Learned counsel for petitioner further submits that as per the medical report of Bhagawati Hospital dated 17.01.2011, in the column of *History and physical examination* it is clearly mentioned that *Hanging Mark (+) around the neck*. He further submits that hanging mark around the neck comes only when there is a case of hanging; whereas the allegations made by the wife of the petitioner is that the petitioner administered some poisonous substance and thereafter she became unconscious and she regained her consciousness in the hospital.

12. He further submitted that the wife of the petitioner was re-examined on 24.01.2011 at about 04:45PM at Dr.Baba Saheb Ambedkar Hospital, Rohini, Delhi wherein it is recorded in under the column of *Particulars of injuries or symptoms in case of poisoning* that alleged history of the patient being found semi conscious in a room at her home on the night 16.01.2011. She was taken to Bhagwati Hospital and an MLC was prepared vide 652 and hospital No.46/2010. Now, patient has been brought for opinion regarding the cause of the

marks on the neck. At the bottom of the report, it is mentioned that *The pattern of the ligature mark is consistent with hanging.*

13. Learned counsel further submits that as per the opinion of the two hospitals, the present case is not a case of administering some poisonous substance rather of hanging and an attempt to commit suicide.

14. He has drawn the attention of this Court at Annexure E which is hand written note in *Hindi* wherein victim allegedly written as under:-

“Being fed up with my parents, my in-laws I am committing suicide.”

15. Though, learned counsel has also referred to the order dated 14.09.2011 passed by this Court in Bail Application No.983/2011 in respect of the petitioner herein. However, I am not considering the observations made therein.

16. Learned counsel for the petitioner further submitted that in the report dated 04.08.2011 of FSL, wherein it is reported that *‘On chemical and TLC examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibit ‘1’.* Therefore, even on the basis of the FSL report, the case of the prosecution is baseless as far as Section 307 Indian Penal Code, 1860 is concerned.

17. Ms.Rajdipa Behura, learned APP, on the other hand, submits that after the incident, continuously for four days, victim was not fit for making statement, therefore, her statement could not be recorded

before 22.01.2011. She has referred to annexure P at page No.104 of the petition, wherein it is recorded that '*the statement of the victim would be recorded as soon as she would be fit for statement*'.

18. She further submitted that as per the report of Dr.Baba Saheb Ambedkar Hospital, Rohini, Delhi the patient found in semi-conscious state in her room on the night 16.01.2011, thereafter she was taken to Bhagwati Hospital and the MLC was prepared. It is further recorded that the pattern of ligature mark is consistent with hanging, which shows that petitioner had tried to kill her, somehow she is safe.

19. Learned APP further referred to the statement of the wife of the petitioner wherein she has clearly stated that she he (petitioner) administered some poisonous substance due to which, she became unconscious and found herself in the hospital.

20. She fairly concedes that the FSL report dated 04.08.2011 does not support the allegations, as made by the victim.

21. I note that the issue of strong suspicion has already been decided by the Apex Court way back in 1979 in ***Union of India vs. Prafulla Kumar (supra)*** wherein it is recorded that the strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. It is further recorded that if at the initial stage, there is a strong suspicion which leads the Court to think that there is a ground for presumption that the accused has committed the offence, then it is not open to Court

to say that there is not sufficient ground for proceeding against the accused.

22. In the instant case, there is one strong report of the FSL whereby the case as alleged by the victim is not made out. Though, the suicide note, as mentioned by learned counsel, seems to be strong proof, however, at this stage, in the absence of FSL opinion, nothing can be said on that.

23. In the circumstances, I am of the opinion that charge framed under Section 307 Indian Penal Code, 1860 vide impugned order dated 18.10.2011 is faulty one, therefore, charge under Section 307 Indian Penal Code, 1860 against the petitioner is hereby quashed.

24. Learned Trial Court may proceed as per law for the offence under Section 498A/406 Indian Penal Code, 1860.

25. Observations made herein shall not come in the way of learned Trial Court during trial.

26. In view of above, Criminal Revision Petition No.531/2011 is allowed and stands disposed of.

27. Consequently, Criminal M.A.No.18515/2011 (stay) renders infructuous and disposed of as such.

28. *Dasti.*

SURESH KAIT, J

DECEMBER 02, 2011/MK